

[illegible]

## I. PARTIES

(NOTE: THE FOLLOWING IS PROVIDED AS A SAMPLE OF A TYPICAL OUTSIDE COUNSEL CONTRACT FOR INFORMATIONAL PURPOSES ONLY. IT MAY BE MODIFIED IN THE SOLE DISCRETION OF THE CITY ATTORNEY IF DEEMED NECESSARY IN THE CITY'S INTERESTS.)

**A. Address**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made between the CITY OF HOUSTON, TEXAS ("City"), a municipal corporation, doing business in the State of Texas ("Firm").

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City

Firm

City Attorney  
City of Houston  
P. O. Box 368  
Houston, Texas 77251

RECITALS:

FOR THE MUTUAL PROMISES SET OUT BELOW, the Parties agree as follows:

B. Table of Contents

TABLE OF CONTENTS

Page No.

I. PARTIES .....	1
A. Address .....	1
B. Table of Contents .....	2
C. Parts Incorporated .....	3
D. Controlling Parts .....	3
E. Signatures .....	4
II. DEFINITIONS .....	5
III. DUTIES OF FIRM .....	5
A. Scope of Services .....	5
B. Coordinate Performance .....	5
C. RELEASE .....	5
D. Insurance .....	6
E. Confidentiality - Protection of City's Interest .....	6
F. Use of Work Products .....	7
G. Licenses and Permits .....	7
H. Compliance with Laws .....	7
I. Conflicts of Interest .....	7
J. Exhibits .....	7
K. Pay or Play .....	7
IV. DUTIES OF CITY .....	8
A. Pre-Contract Services .....	8
B. Payment Terms .....	8
C. Taxes .....	8
D. Method of Payment .....	8
E. Disputed Payments .....	9
F. Limit of Appropriation .....	9
G. Access to Data .....	10
V. TERM AND TERMINATION .....	10
A. Contract Term .....	10
B. Termination for Convenience by City .....	10

C.	Termination for Cause by City .....	11
D.	Termination for Cause by Firm.....	12
VI.	MISCELLANEOUS .....	12
A.	Independent Contractor .....	12
B.	Severability.....	12
C.	Entire Agreement .....	12
D.	Written Amendment .....	12
E.	Applicable Laws .....	12
F.	Notices .....	13
G.	Captions.....	13
H.	Non-Waiver .....	13
I.	Inspections and Audits .....	13
J.	Enforcement.....	13
K.	Ambiguities.....	14
L.	Survival .....	14
M.	Publicity.....	14
N.	Parties In Interest.....	14
O.	Successors and Assigns .....	14
P.	Business Structure and Assignments.....	14
Q.	Remedies Cumulative .....	15
R.	Contractor Debt.....	15

Exhibit "A" - Fee Schedule

Exhibit "B" - City Attorney's Policy on Outside Counsel

Exhibit "C" - Equal Employment Ordinance Compliance

Exhibit "D" - Drug Policy Compliance Agreement

Exhibit "E" - Firm's Certification of No Safety Impact Positions

Exhibit "F" - Drug Policy Compliance Declaration

Exhibit "G" –Pay or play acknowledgement

C. Parts Incorporated

The above-designated sections and exhibits are incorporated into this Agreement.

D. Controlling Parts

If a conflict among the sections and exhibits arises, the sections control over the exhibits.

E. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

ACCEPTED & APPROVED:  
ATTEST/SEAL (if a corporation):  
WITNESS (if not a corporation):

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:  
Tax Identification Number: \_\_\_\_\_

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS  
Signed by:

\_\_\_\_\_

City Secretary

\_\_\_\_\_  
Mayor

APPROVED:

COUNTERSIGNED BY:

\_\_\_\_\_

City Attorney

\_\_\_\_\_  
City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

\_\_\_\_\_

\_\_\_\_\_  
Sr. Assistant City Attorney  
L.D. File No.

## II. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and the Firm.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Attorney" means the City Attorney of the City of Houston, or the person he designates.

"Firm" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

"Parties" mean all the entities set out in the preamble that are bound by this Agreement.

## III. DUTIES OF THE FIRM

### A. Scope of Services

Provide City Attorney legal services related to \_\_\_\_\_ and such other legal services as the City Attorney requests. .

The Firm represents, based on currently available information, that it can provide all the services related to the \_\_\_\_\_ contract for an amount not to exceed \$\_\_\_\_\_ through \_\_\_\_\_ (date).

### B. Coordinate Performance

The Firm shall coordinate its performance with the City Attorney and other persons that the City Attorney designates. The Firm shall promptly inform the City Attorney and other designated person(s) of all significant events relating to the performance of this Agreement.

### C. RELEASE

THE FIRM AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS AND LEGAL REPRESENTATIVES (COLLECTIVELY IN THIS SECTION THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE OR LOSS IS CAUSED BY THE CITY'S SOLE OR

CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY  
OR STRICT STATUTORY LIABILITY.

D. Insurance

The Firm shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All liability policies must be issued by a company with a Certificate of Authority from the State Department of Insurance to conduct insurance business in Texas or a rating of at least B+ and a financial size of Class VI or better according to the current year's Best's Key Rating Guide, Property-Casualty United States. The Firm shall maintain the following insurance coverage in the following amounts:

Professional Liability

\$1,000,000 per occurrence; \$1,000,000 aggregate

Defense costs are excluded from the face amount of the policy.

Aggregate limits are per 12-month policy period  
unless otherwise indicated.

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City. The Contractor shall give 30 days' written notice to the City before any insurance policy is canceled, materially changed, or nonrenewed. Within the 30-day period, the Firm shall provide other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If the Firm does not comply with this requirement, the City Attorney, at his or her sole discretion, may (i) immediately suspend the Firm from any further performance under this Agreement and begin procedures to terminate for default, or (ii) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to the Firm under this Agreement.

E. Confidentiality - Protection of City's Interest

Firm recognizes that it shall be disqualified from representing any other client with interest materially and directly adverse to the City (1) in any matter which is substantially related to Firm's representation of the City and (2) with respect to any matter where there is a reasonable probability that confidential information the City furnished to Firm could be used to the City's disadvantage.

F. Use of Work Products

(1) The Firm agrees that all documents drafted pursuant to this Agreement are the property of the City. The City owns and may use all documents, all notes, plans,

computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products (collectively, the "Documents") that the Firm prepares or obtains under this Agreement.

(2) The Firm warrants that it owns the copyright to the Documents.

(3) The Firm shall deliver the original Documents to the City Attorney on request.

Within five working days after this Agreement terminates, the Firm shall deliver to the City Attorney the original Documents, and all other files and materials the Firm produces or gathers during its performance under this Agreement.

G. Licenses and Permits

The Firm shall obtain, maintain and pay for all licenses, permits and certificates including all professional licenses required by any statute, ordinance, rule or regulation. The Firm shall immediately notify the City Attorney of any suspension, revocation or other detrimental action against the license of any of its attorneys.

H. Compliance with Laws

The Firm shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

I. Conflicts of Interest

If actual or potential conflict arises between the City's interests and the interests of other clients the Firm represents, the Firm shall immediately notify the City Attorney by fax transmission or telephone. If the City Attorney consents to the Firm's continued representation of the other clients, the City Attorney shall notify the Firm in writing. If the City Attorney does not issue written consent within 3 business days after receipt of the Firm's notice, the Firm shall immediately terminate its representation of the other client whose interests are or may be in conflict with those of the City.

J. Exhibits

Exhibits "A" through "G" attached to this Agreement and the City Attorney's Policy on Outside Counsel, as posted on the City of Houston City Attorney's website are hereby incorporated and made a part of this Agreement.

K. Pay or Play

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Firm has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as



they are set out at the time of City Council approval of this Agreement. Firm shall execute Exhibit "G" to this effect.

#### IV. DUTIES OF CITY

A. Payment Terms The City shall pay Firm for the services it renders under this Agreement in accordance with the hourly rate schedule set forth in Exhibit "A". The City shall reimburse Firm for reasonable and actual out-of-pocket expenses as authorized by Exhibit "B" in connection with the legal services. The City shall pay Firm on the basis of monthly invoices submitted by Firm in accordance with the provisions of Exhibits "A" and "F" and approved by the City Attorney. The City shall make payments to Firm at its address for notices within 30 days of receipt of an approved invoice.

B. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. The Firm's invoices to the City must not contain assessments of any of these taxes. The City Attorney will furnish the City's exemption certificate and federal tax identification number to the Firm if requested.

C. Method of Payment

The City shall pay the Firm on the basis of invoices submitted by the Firm and approved by the City Attorney showing the hours worked in the preceding month and the corresponding hourly rates plus Reimbursable Expenses. The City shall make payments to the Firm at its address for notices within 30 days of receipt of an approved invoice.

D. Disputed Payments

If the City disputes any items in an invoice the Firm submits for any reason, including lack of supporting documentation, the City Attorney shall temporarily delete the disputed item and pay the remainder of the invoice. The City Attorney shall promptly notify the Firm of the dispute and request remedial action. After the dispute is settled, the Firm shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

E. Limit of Appropriation

(1) The City's duty to pay money to the Firm for any purpose under this Agreement is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$\_\_\_\_\_ to pay money under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

(3) The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

\$ \_\_\_\_\_

(4) The Original Allocation plus all supplemental allocations effected by notice to the Firm in substantially the foregoing form, if any, shall be the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. The Firm must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, the Firm's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

F. Access to Data

The City shall, to the extent permitted by law, allow the Firm to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for the Firm to perform under this Agreement.

The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for the Firm's use.

V. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the countersignature date by the City Controller and remains in effect until all services hereunder have been provided, unless sooner terminated under this Agreement.

B. Termination for Convenience by City

The City Attorney may terminate this Agreement at any time by giving 10 days written notice to the Firm. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies, which exist now or in the future.

On receiving the notice, the Firm shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, the Firm shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to the Firm for services actually performed, but not already paid for, in the same manner as prescribed in Section IV-A unless the fees exceed the allocated funds remaining under this Agreement.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE THE FIRM'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. THE FIRM WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION) IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

C. Termination for Cause by City

If the Firm defaults under this Agreement, the City Attorney may either terminate this Agreement or allow the Firm to cure the default as provided below. The City's right

to terminate this Agreement for the Firm's default is cumulative of all rights and remedies, which exist now or in the future. Default by the Firm occurs if:

- (1) The Firm fails to perform any of its duties under this Agreement;
- (2) The Firm becomes insolvent;
- (3) all or a substantial part of the Firm's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed for the Firm.

If a default occurs, the City Attorney may, but is not obligated to, deliver a written notice to the Firm describing the default and the termination date. The City Attorney, at his or her sole option, may extend the termination date to a later date. If the City Attorney allows the Firm to cure the default and the Firm does so to the City Attorney's satisfaction before the termination date, then the termination is ineffective. If the Firm does not cure the default before the termination date, then the City Attorney may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the City Attorney must notify the Firm in writing. After receiving the notice, the Firm shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

D. Termination for Cause by the Firm

The Firm may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and the Firm wishes to terminate the Agreement, then the Firm must deliver a written notice to the City Attorney describing the default and the proposed termination date. The date must be at least 10 days after the City Attorney receives notice. The Firm, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then the Firm may terminate its performance under this Agreement on the termination date.

## VI. MISCELLANEOUS

A. Independent Contractor

The Firm shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

B. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

C. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.

D. Written Amendment

Unless otherwise specified, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and the Firm. The City Attorney is only authorized to perform the functions specifically delegated to him or her in this Agreement.

E. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

F. Notices

All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

G. Captions

Captions contained in this Agreement are for reference only and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

H. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the City Attorney, or by any other employee or agent of the City, of any part of the Firm's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The City Attorney is not authorized to vary the terms of this Agreement.

I. Inspections and Audits

City representatives have the right to perform, or have performed, (1) audits of the Firm's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. The Firm shall keep its books and records available for this purpose for at least three years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

J. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. The Firm shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining the Firm's compliance with this Agreement, with the exception of those documents made confidential by Federal or State law or regulation.

K. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

L. Survival

The Firm shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement.

M. Publicity

The Firm shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the City Attorney.

N. Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and the Firm only.

O. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

P. Business Structure and Assignments

The Firm shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Attorney's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in '9.406 of the Texas Business & Commerce Code. In the case of such an assignment, the Firm shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

The Firm shall not delegate any portion of its performance under this Agreement without the City Attorney's prior written consent.

Q. Remedies Cumulative

Unless otherwise specified, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies, which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

R. Contractor Debt

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FOR ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR.



EXHIBIT A  
FEE SCHEDULE

Attorney services and other services provided directly by the Firm shall be billed on an hourly basis in a form acceptable to the City Attorney. The Firm shall budget and project, the attorney and other staff billing time for the Project, which shall be approved in advance by the City Attorney.

The billing rates for legal services for our representation of the City of Houston are as follows:

